

Theresa Rice

From: Bainbridge Citizens [gary@tripp.net]
Sent: Tuesday, September 13, 2011 2:22 PM
To: *Bainbridge Citizens
Subject: SMP Big Issues
Attachments: SMP Big Issues.docx

To Planning Commission and City Council

The Planning Commission and City Council should decide the big issues **first**, because doing so will cause all the other issues and regulations to fall into place.

The Big Issues are

1. Are we going to make existing homes and uses permanently conforming?
2. Retain the existing buffers or set new ones.
3. Protect water dependent uses?
4. Dispute resolution matrix.

Please attached:

Send comments to Planning Commission pcd@ci.bainbridge-isl.wa.us and City Council Council@bainbridgewa.gov

Bainbridge Citizens

Commonsense Environmental Regulations and Accountable Government

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Big Issues - SMP

The Planning Commission and City Council should decide on the big issues first, because doing so will cause all the other issues and regulations to fall into place.

The Big Issues are

1. Are we going to make existing homes and uses permanently conforming?
2. Retain the existing buffers or set new ones.
3. Protect water dependent uses?
4. Dispute resolution matrix.

Please don't accept the schedule / agenda as given to you. Make the big decision now.

Existing Homes and Uses

Existing legally-constructed homes, structures and uses should be made permanently legal and be allowed to be rebuilt. *To do otherwise would damage the property people have worked a lifetime for and the community built around the shore and its uses.*

WAC 173 26 221(5)(a) specifically states: "Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures...".

Shoreline Vegetation Buffers are the primary reason homes and uses might be considered non-conforming. Abiding by WAC 173 26 221(5)(a) resolves that problem.

According to Rep. Jan Angel, who was on the committee that authored the bill, SSB 5451 allows Bainbridge to:

- 1) Authorize residential structures and appurtenant structures that are legally established and are used for a conforming use (but that do not meet standards for setbacks, buffers or yards, area, bulk, height or density) to be considered conforming structures, and
- 2) Allow redevelopment, expansion, change with the class of occupancy or replacement of the residential structure if it is consistent with the master program, including requirements for 'no net loss' of shoreline ecological functions.

Suggested Amendment:

"Existing legally- constructed homes, appurtenant structures and residential uses, including lawns, landscaping, recreation areas and water dependent uses, are conforming and may be remodeled, rebuilt, and redeveloped in the same footprint, provided that any expansion of the footprint that causes new additional impact on shoreline ecological function must be mitigated -- with onsite or offsite mitigation in

proportion to the impact -- and thereby meet the 'No Net Loss' standard for that property."

Vegetation Buffers:

As already suggested by many others, the current 50 foot buffer has worked well for 15 years and there is no reason to change it. The existing 50 foot buffer for residential zones and 25 foot buffer for Urban Residential of the COBI 1996 SMP should be retained.

WAC 173 26 221(5)(a) specifically states: "Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures...".

Suggested Amendment:

Vegetation Buffers apply only to new development on undeveloped lots or proportionally as mitigation for new impacts caused by expansion of existing structures and uses. An expansion of an existing home that results in a new impact on ecological function would be required to mitigate (either on-site or off-site) to achieve no net loss, and the mitigation would therefore be measured by the new ecological impact, and be proportional to the impact.

Water Dependent Use

Water Dependent Use means activities that can only be done on the shoreline or water. We live on an island where our greatest resource is the ability to have Water Dependent Uses. We should promote water dependent uses and not imposing new shoreline designation which bans water dependent uses or makes them more difficult and expensive to access.

Suggested Amendment:

All shoreline property on Bainbridge, except those rare areas classified as Natural, shall be designated as suitable for water dependent uses. Areas with high ecological function will require more care to avoid impacts and more mitigation of any impacts.

Dispute resolution matrix

The City's "current interpretation" of the code is always changing. It changes from property owner to property owner, from city employee to city employee and from week to week. The City's acceptance of expert's reports and opinions are also subjective and at the discretion of City employees. This has led to many disputes and legal actions. The solution is to place more weight on the decisions of the City Council and on the opinions of third party experts and professionals, such as engineers, arborists, geologists, and wildlife biologists.

Suggested Matrix

Interpretation of code	Property owners shall be given the most favorable interpretation of the code.	Anything less would be to allow city staff to make policy on an individual property and arbitrary basis. It is wrong for the City to change its interpretation of the code to achieve the particular outcome it may desire at the moment. If the City Council does not like the result, the City Council can and should change the code.
Respect for Experts	The reports and opinions of independent experts shall be assumed to be correct.	Any other position places the arbitrary decisions of city employees above that of the independent experts.
Substitution of Experts	The city may, at its own expense, hire an independent third party expert. If the City's expert's opinion is different than that of the property owner's expert, the decision is subject to arbitration	If there is a cost for rejection of the opinion or report from professionals, then the city will only do so when there is a real issue involved.
Arbitration	If the Property Owner and City's experts cannot come to an agreement, then the issue shall be submitted to arbitration and the cost of arbitration shall be divided between the City and the property owner.	

Submitted by

Gary Tripp, Director of *Bainbridge Citizens*

Sept. 12, 2011